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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,513	01/23/2002	Anthony Brennan	1442026	9358

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ALBANY, NY 12203

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,513

Applicant(s)

BRENNAN ET AL.

Examiner

Robert M. F tsuga

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-- Th MAILING DATE of this communication app ars on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,22,33 and 37-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,21,23-32,34-36,40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 23 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

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1. Applicant's election without traverse of Species I in Paper No. 4 is acknowledged. Accordingly, claims 19, 20, 33 and 37-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b). Furthermore, applicant states in the election response that claim 22 reads on the elected species. However, claim 22 is objected to as appearing to read on Species II (Fig. 4) considering paragraph 0025 of the instant specification. Therefore, claim 22 is also withdrawn from further consideration.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "nozzle" set forth in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is required to submit a proposed drawing correction in response to this Office action. Any proposal by applicant for amendment of the drawings to cure defects must consist of two parts:

a) A separate letter to the draftsman in accordance with MPEP 608.02(r); and

b) A print or pen-and-ink sketch showing changes in red ink in accordance with MPEP 608.02(v).

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IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office action, and may not be deferred.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject matter set forth in claims 18, the "means for providing" set forth in claims 28 and 30, and the "method" language set forth in claims 34 and 40, could not be found in the specification.

4. The claim hierarchy does not appear to be in accordance with MPEP 608.01(m). Claims remaining at allowance may require renumbering.

5. Claims 7-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 7 recites a "nozzle". Implementation of this subject matter is neither disclosed nor evident to the examiner.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 10, 16-18, 21, 23-32, 34-36, 40 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin '260.

The Martin '260 (Martin) reference (Figs. 11-15) discloses a system and "method" comprising: a body including a water inlet (at 107), an air inlet (at 105), and means for providing a plurality of jets 102,103; a water chamber 98,99; an air chamber 100,101; and a hydrotherapy tub 93 (Fig. 8), as claimed.

8. Claims 7-9, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin and Hart et al.

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Although the outlet (102) of the Martin fluid flow system does not include a nozzle, as claimed, attention is directed to the Hart et al. (Hart) reference which discloses an analogous fluid flow system which further includes an outlet having a nozzle 44. Therefore, in consideration of Hart, it would have been obvious to one of ordinary skill in the art to associate a nozzle with the Martin fluid flow system in order to permit altering jet flow characteristics.

- X 9. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin and Guiler.

Although the water chamber of the Martin fluid flow system does not include conical structures, as claimed, attention is directed to the Guiler reference which discloses an analogous fluid flow system which further includes a water chamber 13 having a conical structure 18. Therefore, in consideration of Guiler, it would have been obvious to one of ordinary skill in the art to associate conical structures with the Martin fluid flow system in order to increase water flow velocity.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Sierant and Martin '261 references disclose various fluid flow systems having features in common with the instant invention.

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11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Tuesday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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